

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

**DONNIE W. FOULKS v. HOWARD CARLTON, WARDEN, and the
STATE OF TENNESSEE**

**Appeal from the Criminal Court for Johnson County
No. 4732 Lynn W. Brown, Judge**

No. E2005-02558-CCA-R3-HC - Filed March 6, 2007

The petitioner, Donnie W. Foulks, petitioned the Criminal Court for Johnson County for relief from his allegedly illegal sentence. The trial court held that the petition demonstrated no basis for relief and dismissed the petition. The state moves this court to affirm the judgment pursuant to Tennessee Court of Criminal Appeals Rule 20. We sustain the state's motion and affirm the order of dismissal.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed
Pursuant to Rule 20, Rules of the Court of Criminal Appeals**

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which NORMA MCGEE OGLE and D. KELLY THOMAS, JJ., joined.

Donnie W. Foulks, Mountain City, Tennessee, Pro se.

Robert E. Cooper, Jr., Attorney General and Reporter; C. Daniel Lins, Assistant Attorney General; for the appellee, State of Tennessee.

MEMORANDUM OPINION

The petitioner was convicted in the Greene County Criminal Court of second degree murder. The trial court sentenced the defendant as a Range I, standard offender to twenty-five years in the custody of the Department of Correction and imposed a five thousand dollar fine. This court affirmed the judgment on appeal. See State v. Donnie Wayne Foulks, No. 03C01-9705-CR-00194 (Tenn. Crim. App. Aug. 17, 1998), app. denied (Tenn. Nov. 5, 2001).

On September 12, 2005, the petitioner filed a pro se petition for habeas corpus relief. He claimed that his judgment was void because it was improperly marked to indicate that he must serve "100%" of his sentence. The petitioner further contended that the Tennessee Department of Correction refuses to award him sentence reduction credits to which he claims he is entitled. On October 24, 2005, the trial court dismissed the petition. The trial court found that the petitioner failed to establish either an expired sentence or a void judgment and that his claim regarding the

failure to award sentence reduction credits was properly pursued through the Uniform Administrative Procedures Act. The instant appeal followed.

The record includes a copy of the December 18, 1996, judgment sentencing the petitioner upon his conviction for second degree murder. As relevant to his claim, a box on the standard judgment form is marked to reflect that the petitioner was sentenced pursuant to the "Sentence Reform Act of 1989." A box indicating sentencing as a "Standard 30% Range I" offender is also marked. However, "Standard 30%" is crossed out and the phrase "100% - 40-35-501" has been handwritten above. The petitioner argues that owing to his lack of prior felony convictions, he qualifies and should have been sentenced as a "standard Range I offender." He maintains that "[t]here is not now and has never been any classification as a 100% - 40-35-501 offender" and concludes that it was not within the trial court's jurisdiction to sentence him as such. As noted, the petitioner was convicted for second-degree murder, a Class A felony. See Tenn. Code Ann. § 39-13-210(b). The trial court imposed a sentence of twenty-five years, the maximum term for a Range I offender committing a Class A felony. See Tenn. Code Ann. § 40-35-112(a)(1). Release eligibility in the petitioner's case, however, is addressed and governed in Code Section 40-35-501. Subsection (i)(1) provides, in relevant portion:

There shall be no release eligibility for a person committing an offense, on or after July 1, 1995, that is enumerated in subdivision (i)(2). Such person shall serve one hundred percent (100%) of the sentence imposed by the court less sentence credits earned and retained.

Tenn. Code Ann. § 40-35-501(i)(1). Among the enumerated offenses to which the cited language expressly applies is second degree murder. See Tenn. Code Ann. § 40-35-501(2)(B).

In our view, in marking the petitioner's judgment form as it did, the trial court merely noted the fact that by operation of law, the petitioner would not be eligible for release after service of thirty percent of his sentence despite receiving a sentence within Range I. With respect to whether a claim involving an allegedly erroneous release eligibility status is even cognizable in the context of a habeas corpus petition, this court has observed:

Although the writ of habeas corpus generally may not be used to address an anomalous expression of release eligibility that is within the broad statutory ambit afforded the sentencing court, this court has declared illegal and void judgments in which release-eligibility provisions fell beyond the outer limits of statutory authority.

Dewayne Cathey v. State, No. W2003-00411-CCA-R3-CO, slip op. at 5 (Tenn. Crim. App. Jul. 28, 2004), app. denied (Tenn. Dec. 20, 2004). In the instant case, had the trial court entered a judgment sentencing the defendant to twenty-five years as Range I offender with a thirty percent release eligibility, the sentence would have been illegal because it would have been in direct contravention of the statutory provision denying release eligibility to one convicted of second-degree murder.

Indeed, this court has reversed the judgment of the trial court summarily dismissing a habeas corpus petition under just such facts. See Mario Lambert v. Jack Morgan, Warden, No. M2002-00172-CCA-RM-PC (Tenn. Crim. App. Mar. 22, 2002), reh'g denied (Tenn. Crim. App. Apr. 24, 2002).

Upon due consideration, we conclude that the trial court correctly denied issuance of the writ. “It is well established that an accused confined to prison pursuant to judicial authority may only obtain habeas corpus relief when the accused's sentence is void or the term of imprisonment has expired.” State ex rel. Stewart v. McWherter, 857 S.W. 2d 875, 877 (Tenn. Crim. App. 1992) (citing Hall v. Heer, 217 Tenn. 392, 398 S.W.2d 71 (1966)); State ex rel. Dickens v. Bomar, 214 Tenn. 493, 381 S.W.2d 287 (1964); State ex rel. Grandstaff v. Gore, 182 Tenn. 94, 184 S.W.2d 366 (1945); Adams v. Russell, 179 Tenn. 428, 167 S.W.2d 5 (1942). The petitioner’s claim that his sentence is unlawful because his judgment was marked to reflect applicable law regarding his lack of release eligibility is without merit. That is, we find nothing appearing on the face of the judgment to indicate that the sentencing court lacked the statutory authority to render the judgment. See Dykes v. Compton, 978 S.W.2d 528, 529 (Tenn. 1998) (citing Archer v. State, 851 S.W.2d 157, 161 (Tenn. 1993)).

The petitioner's remaining claim that the Department of Correction erroneously refused to award him sentence reduction credits he contends he has earned is not cognizable in a habeas corpus action because, even if proven, it would not establish a void (or even a voidable) judgment. The state correctly observes that the appropriate avenue for pursuing relief in a dispute involving sentencing credits is through the Uniform Administrative Procedures Act. See Tenn. Code Ann. § 4-5-101 - 4-5-323. Lastly, the petitioner asserts that the refusal to award him sentence reduction credits pursuant to Tennessee Code Annotated Section 41-21-236, the Code section governing “time reduction credits,” constitutes a violation of his rights to due process and equal protection of the laws. This is not a cognizable claim for habeas corpus relief because, even if true, it would not render the petitioner’s judgment void.

Upon due consideration of the pleadings, the record, and the applicable law, the court concludes that the petitioner has not established that he is entitled to habeas corpus relief. Accordingly, the state’s motion is granted. The judgment of the trial court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

JAMES CURWOOD WITT, JR., JUDGE